

1940

SOME
QUESTIONS
UPON THE
LEGISLATIVE CONSTITUTION
OF
IRELAND,
PROPOSED TO
The several Pamphleteers and other Writers
AGAINST
THE LATE PROROGATION:
For their CANDID ANSWERS thereto;
BUT CHIEFLY
For the CONSIDERATION of the PUBLICK.

Vincit omnia veritas.

D U B L I N :

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QUESTIONS

FROM THE

LEGISLATIVE CONSTITUTION

IRISH

PROLOGUE

The General Principles of the



AND

THE LATE PROLOGUE

For their Canonical Answers

AND

For the CONSIDERATION of the

THE

DUBLIN

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SOME
QUESTIONS
UPON THE
LEGISLATIVE CONSTITUTION
OF
IRELAND, &c.

AS there is not, nor perhaps ever was, a Matter of more Importance to this Kingdom, than the well understanding the Question now depending, concerning *the Prorogation of the Parliament, and the Cause that produced it*; and as several Pamphlets, and other Writings, are daily publishing against the Measure, some of which,

which, either through Ignorance, or from Design, are so penned, that they much rather serve to envelope, and obscure, than to unfold the Truth; so that the chief Views of these Authors seem only to deceive and inflame; and, more especially as, Statutes and Laws are argued from, not as they are, but as these Writers wish them to be; Clauses and Sentences also in these Statutes, which are the most material in Defence of the Measure, are not only suppressed, but other Matters are suggested, as Facts, from Conjecture only; or because the contrary (as it is said) did not appear to the Writers thereof: whilst others of them, under the specious Pretext of *conciliating*, not only contain as uncandid Misrepresentations to the full, as the former, but such Rage and foul Abuse of Men and Measures, at length break forth, as plainly evince that the Intentions of them all are strictly the same.

For all these Reasons then, it is incumbent on every Man who understands the Matter in any Degree, and has a real Love for his Country, to do all in his Power to prevent his Fellow Members in Society from being imposed upon, and led astray in so momentous a Business. I shall therefore, propose to these Writers
a few

a few plain and unadorned Questions, which, if they either cannot, or are not willing to answer, every Man who chooses it, may, with a very little Trouble be fully satisfied as to the several Matters mentioned therein, as they are taken from Facts and Records which are subject to the Examination of all who are pleased to inspect them. To proceed then,

Wherefore have the *Observer*, as also the Author of the Constitution of Ireland, &c. omitted or not inserted in the true Words of it, that most material Part of the Statute of Philip and Mary, (in which the Statute of Henry VII. is not only expounded, but embodied, and upon which the Explanation of this great Question chiefly depends) to wit; "And such Considerations, Causes, Tenours, Provisions, and Ordinances, or any of them, as shall be thereupon certified and returned into the said Realm, under the Great Seal of England, *and none others*, shall and may pass and be enacted here in every such Parliament, in Case the same Considerations, Causes, Tenours, Provisions and Ordinances, or any of them, be agreed and resolved upon by the three Estates of the said Parliament, any Thing contained in this

" present

" present Act, or in the aforefaid Act
 " 10 Henry VII. to the contrary not-
 " withstanding." But the Observations
 and Act will fpeak for themfelves.

Is not the Conftitution of this King-
 dom abfolutely and certainly fixed and
 eftablifhed by thefe two Acts? And by
 the Statute 11 Eliz. Seff 3, is it not
 made invariable until it fhall be altered
 in Manner by the faid Statute prefcri-
 bed?

If by the two firft Acts, the Caufe and
 Confideration of every thereafter to be
 paffed Act, are to be firft certified by the
 Lord Lieutenant and Council: Will any
 Man fay that whilft they are in Force,
 that the Bill for the Supplies is not to be
 one of thofe Acts?

Is every Act to be fo certified, and yet
one not to be certified? Does *all* include
 every Individual? Or the whole include
 every Part? Or may one Individual be
 not comprehended in all? Or a Part be
 not a Portion of the whole?

And if all the Sophifters upon Earth,
 with all the prefent Writers in Defence of
 the late *V—* and *R—*, with all the
 Chicane,

Chicanery, Evasion and Quibble which is collected in their Papers, should endeavour to impose such an Absurdity as a Truth; would any Man in his Senses believe them?

Are not the Constitutions of *England* and *Ireland*, in Regard to the Manner of making of *Laws*, the Reverse of each other? In *England* does not the Proposition come from the *Houses*, or one of them, except in the Case of Acts of Pardon? And is not the Negative in the Crown? But *here*, is not the Proposition to come from the *Crown*, in all Cases without Exception? And the *Negation* or *Rejection* to come from the *Houses*, or one of them? And is not this the Constitution of the two Legislatures respectively?

Wherefore can any Man who knows any Thing of the *Constitution*, doubt in the least but that the *C——ne* have an absolute Right to reject any Bill whatsoever that is returned from *England*? And can any Harm then be done to the *Constitution* without their Consent? And is not their Power in this respect, exceeding great?

But

But will any Man who has a Regard for Truth, be bold to say, that the rejecting the Bill is singly the Question?

And by not rejecting, do they not in Effect give, as without their Concurrence the Supplies cannot be raised? and is not this the true Sense of the Word give in this Case, and of the Extent of their Power?

But can this *Right of rejecting only*, affect or prejudice, or be construed to affect or prejudice any of the Rights of another Branch of the Legislature or the Constitution; or that exclusive Right which is given and established by the aforesaid Laws of certifying the Causes, &c. of every bill? And does not the Security of our glorious Constitution, depend on that invariable Rule, that none of the Branches of it, shall encroach on the Rights of each other?

And will any Man say, that the late V—te of the H—se of C—ns, with the Reason therein for rejecting the Bill, as also the R—lu—n which immediately follows with the same Reason in it, do not imply an absolute Negation

tion of the Rights that are given to the Crown by the *aforesaid Acts*?

And can the *V—te* and the *Reason*, or the *Reason* and the *Vote*, which are in the same Sentence, by any Sophistry or Chicanery be separated the one from the other? And are not both the *Reason* in the *V—te* and the *R—lu—n* directly in Teeth of the Constitution, as it is settled by the two Statutes in Part mentioned in the Observations?

And whilst the same stand unrepealed, can any *P—l—m—t* be legally called until one or more Bill or Bills shall have been originated in the *C—nc—l*?

Does not the very Writ by which a *P—l—m—t* is summoned declare, that they are assembled to treat, communicate and discourse on the Bills which have been previously certified into *England*?

And if they were to object to such a Bill, or Bills, would not all their Proceedings be, by the said Statutes, void and of none Effect, to all Intents and Purposes?

And

And because the Strictness of the legal Mode of Proceeding hath in Practice suffered a Relaxation by the Method of requesting the Council to prepare Bills, which Method hath acquired the Name of *Heads of Bills, with Prayer that it may be enacted*, &c. yet can this be construed to affect the aforesaid Statutes? And would it be proper, if it could be done, to turn this Indulgence into a Right, to the Prejudice of the Donor?

And are not these *Heads of Bills* considered only as *Petitions* to His Majesty, to let him know what Laws His People desire, and not as *regular Bills*?

And do not the P—y C—l often stop or reject them for ever, and as often alter them as they think fit?

If the 22d Statute, of Hen. VII. mentioned by the Author of *the Constitution of Ireland*, &c. could by any *tortured Construction*, or *purposely formed Hypothesis*, (in which and *Conjecture*, he and the *observer* abundantly deals) be interpreted to alter the Constitution, under the aforesaid 4th Statute in the same Sessions, called *Poynings Law*, (as he in vain has laboured to do) yet how will he
get

get rid of the aforesaid subsequent Statutes; 3d and 4th of Philip and Mary, and 11th Eliz. Sess. 3. ? Do not these set up, supposing it had been shaken, the said first Law of the 10th of Hen. VII?

Now, if this Author has deceived in so momentous a Point, is he not unpardonable? Is he not to be doubted in every thing? And may not every Reader be easily convinced of that Truth which depends alone upon Facts?

What does the *Observer* mean by the ten last Lines of the first Paragraph, (Page 18) of his Pamphlet, for several have in vain attempted to decypher it.

Are the Conclusions which in the 14th and 15th Pages of the *Observations*, are drawn from *Suppositions, non Appearances, or Want of Evidences to the Observer, and Conjecture*, a fit Mode of Reasoning, in a Matter of such National Concern; however they may be used (as they daily are) by Advocates in the Courts of Justice, who (according to their Maxims) are at all Events, to do the best they can for their Clients?

Or if there were more intermediate Instances of Omission, or Neglect in asserting a Right so firmly established by two most solemn

solemn Laws, than the two or three which the Observer has mentioned, supposing them to be true, (which he does not pretend to assert) shall they affect that Right?—
Is this Law? Or is it Reason?

Was not the Resolution of the H—e of C—s in 1692, (on which such Stress is laid by the *Observer*) the first of the Sort? And was it not the Cause of the Protest which immediately followed it, and on which the present Protest is founded? And if so, was it right, or proper to draw it into Precedent, and without the least Mention made of the Consequences, in order to justify the Resolution in Question?

But can any V—te, or any R—lu—n of the H—e of C—s, which is but one Branch of the Legislature, Repeal or Annul a positive Law by the three Estates of the Kingdom?

Why also has the *Observer* omitted to mention the Address of the H—e of L—ds and C—s, to their then Majesties, King William and Queen Mary, in the same Month and Year with the said Resolution which he has quoted in his Pamphlet, and is but a few Days previous thereto, in which, the Dependence of this Kingdom

Kingdom on the Crown of Great Britain,
is most fully expressed and declared?

What does the *Observer* mean by the
pressing Exigences of Government, to which
(to use his own Expressions) "All gave
"way?" Does he mean *Money to be put*
into the K—g's own Pocket? Or does he
mean the *Money granted to his Majesty, under*
the constitutional Trust for Publick Services
in general, the Maintenance and Protection
of the Kingdom?

If he means the first, does he understand
the Matter? Or does he act ingenuously?
If he means the latter, was it not most fit
that the Bill for the Supplies should be the
primary, as it was the most material Consi-
deration?

If the Money then be thus for the Bene-
fit of the Public, and that it should ever
happen that a Bill for the Supplies should
not be passed in this Kingdom, pray who
would be the Sufferers?

But what might be the Consequences of
a Refusal? Is not the very Thought of it
alarming?

The

The *Observer* and *Author of the Constitution of Ireland*, &c. are called upon to answer to these Matters :

Did not the House of Commons of Ireland on the 20th of April, 1615, acknowledge *that the Sole Power and Authority* to transmit such *Bills* into *England*, as are to be propounded in Parliament, doth rest in the *Lord Deputy and Council*?

May not the wisest err? And would it be a Dishonour to the first of Men, or of Assemblies, to acknowledge and correct a Mistake?

As for the *Militia Bill*, the principal one whose Loss the *Observer* laments: Does he seriously think, that such a Militia as is in England would be an Advantage to this Kingdom? Is it not notorious, that from the Election Feuds, Family Rivalships, and other Causes, *that* National Measure declines in England every Hour?

Is there any material Difference between a well disciplined and paid Militia, and a standing Army? May not the one be as dangerous to the Constitution as the other?

And

And what have they done in former Times?

If the Protestants in the North are to be a Part of the Militia, how ruinous may it be to the Linen Manufacture, the staple Commodity of the Kingdom? And will any one say, that a sufficient Number of Protestants for the purpose are to be found in other Quarters of the Kingdom, without great Prejudice to Husbandry? And would it be prudent that either *Oak-boys* or *White-boys* should be armed and disciplined?

Were there not three successive Prorogations before the Dissolution in 1692, and several Months between the first Prorogation, and the Act of Dissolving, and all by the *Proclamations of the Lord Lieutenant*? And within this Period, were not the Opinions of the Judges of England and Ireland, taken upon this Point? And were they not unanimous in favour of the Right of the Crown?

Have these Proceedings then the Appearance of having been done in *Heat*, (as has been alledged) or that the Conduct of the then Lieutenant upon the whole, was in the least disapproved of? Or does it appear, that there was a total Suspension of Intercourse between

between the two Kingdoms for all that Length of Time?

Was he on his Return to England, or shortly after, made Master of the Ordnance, Colonel of the first Regiment of Foot Guards, joint Lord Lieutenant, with the Earl of Westmoreland, of the County of Kent, as also Earl of Romney? If so, are these the Tokens of Disgrace? But if there be any Proofs of his Disgrace, why are they not produced? And ought mere Allegations in such Cases to be attended to?

Did not Lord Capel, who succeeded the said Lord Sydney here in the Station of Lord Deputy, on his Speech to the House of Commons, the 29th of August, 1695, on opening the Sessions, tell them that Supplies were necessary for the Discharge of the Debts due by the Crown, and for the Support of Government? And that for raising *some Part of this Money*, he had sent them a *Bill for an additional Duty of Excise, &c.*? And was it not submitted to? And is it not wise to submit when we cannot resist with success?

Now

* This Siffness of the Irish Parliament in 1692, to the Lord Lieutenant, and to the King through him, made many honest, generous Hearts to ach for the Consequences: And a great Man, from the other side of

Now if these Things be as they are here represented, who is then to blame for the present Measure, *the Prorogation of the Parliament?* Not the Crown of Great Britain, for asserting its Rights! Nor surely the Person who is but ministerial on the Occasion, and must execute at the highest Peril, the positive Orders he receives from the Power that employs him? And is not this an Answer to the unjustifiable and severe Insinuation with which the Pamphlet is closed?

But

of the Water, (as is well known) wrote to his Friend, upon that Occasion, vizth of November, 1692, as follows: "Tis now here a busy Time, and not so much Leisure for Resentment, as would doubtless be expressed at another Time, and will be remembered till such Time comes.—My Lord Lieutenant's Deportment on the late Accidents is thought worthy of the Character he sustains. The most natural Conjecture to be made is the disrelishing that Station, and that if he comes over, he may be succeeded by some rougher Hand." &c. &c. The Remainder of this Letter would deter even the boldest (who had the least Regard for their Country) from a wanton or unnecessary Opposition; however, it might serve their private Purposes. Accordingly the *Royal Authority* and the *Rights of the Crown*, to which the *Resolutions* in the preceding Parliament had been derogatory, were fully asserted by the Money Bill sent over by His Majesty, and which was passed without Opposition.

But if the *Observer* had Nothing else in View, but merely the Investigation of Truth, why has he introduced the Affairs of the *Augmentation*, the Contest between *Great-Britain* and the *Colonies*, or the *embarrassed Affairs of England*, into his Pamphlet? Surely it was not with any View to disturb a quiet People, and to incite them to attempt the taking Advantage thereof? Or would it be generous, because they are embarrassed already, to embarrass them more?

Is it not an absolute Illusion to compare us with the *Colonies*? Or to insinuate, that, by opposing we shall succeed in whatever we take into our Heads to demand? Might not a Contest between us and England, be to us most dangerous? And especially if it were ill-founded? Can it be supposed, that they, in such a Case, would yield to us? Have we the same Connections with the People of *England* which the *Colonies* have, to induce them to espouse us? Are we at as great a Distance from *England*, as they are? Could we retain in our Hands Millions of the Money of *England*, until we compelled the doing of that which we would wish to have done? And did the Americans

cans even attempt to with-hold from
England, any of the Contributions which
 they had before paid for their Defence
 and Protection?

Until I reached the last five Paragraphs
 of the *Observer's* Pamphlet, I was some-
 what inclined to think, (I however he
 might be mistaken) that he meant to
 conciliate; but such a Reverse of Mode-
 ration at length creeps out, and so art-
 fully, (I cannot say politely) as might
 almost shake the Credit of Demonstration
 itself: so shall conclude with this most
 earnest Prayer: *May Heaven preserve this*
present quiet happy Kingdom from all such
Sorts of Conciliators: they are now too
 common; and especially at a Time when
 the lowest *Mechanicks* are become *Resol-*
vers of constitutional Rights, *Politicians*,
Quakers, and *Calists*, most fatally, to the
 Neglect of their Callings: *And that, all*
on this Side of the Question, with the Obser-
ver, may be at free from Imposition, as those
on whom he has charged it: And let *Facts*
 only determine the whole.

PUBLICOLA.

all these Reasons then, they must be
 equally harmless, unless like the *Webbs*
 which

P. S.

most bold-^{ly} of attempts ever made
 P. S. After the above Questions had
 been given to the Press, the Pamphlet,
 intituled, *The Rights and Privileges of Par-
 liaments*, &c. fell into my Hands, which,
 so far as it is of the *English Language*,
 (for some of it does not seem to be of any
 Tongue or Language in the known
 World) I at length have laboured
 through; for this, like the Productions of
 his associate Writers the Authors of the
twenty-one Letters on the Augmentation,
 and the *ten* already published upon *Politi-
 cals*, *Law*, and which may arrive at
 twenty-one more; is so replete with Repeti-
 tion upon Repetition, Tautology upon
 Tautology, Intemperance and Confusion,
 not to mention the Disrespect to the most
 venerable Characters, Indignities, and
 gross Abuse throughout, (the much too
 frequent substitutes of Truth and Reason)
 that such Geniuses only, as they who per-
 such Writings, could endure to read them.
 However, this Advantage must be allow-
 ed them, that they are Unanswerable,
 and to attempt it might give them some
 Degree of Credit, which otherwise it is
 impossible, they could ever acquire: For
 all these Reasons then, they must be
 equally harmless, unless like the *Webs*
 which

which are spun from the dusty Entrails of *Arachne*, they may intangle a few unwary Insects therein. They remind me of the following Story in *Plutarch's Morals*: The Ambassadors of Samos, prepared with a long Oration, came to Cleomenes, King of Sparta, to excite him to a War against the Tyrant Polycrates, who, after he had heard their tedious Harangue, gave them this short Answer: "As to the *Exordium*, I remember it not, "nor consequently the *Middle* of your "Speech; but, for what concerns your "Conclusion, I will not do what you desire."

I have also just read, "The Comparative State of the two rejected Bills, &c." let every impartial, candid Reader carefully peruse this Pamphlet, and compare it with all those other Productions; let him also examine the several Facts and Records mentioned therein, and in these Queries, and he may then be fully convinced of the Truth of the Question, and on which Side, it is to be found.

F I N I S.

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